

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

SUSAN JENKINS

PLAINTIFF

v.

Civil No. 01-6138

LINDA S. MCMAHON,¹ Commissioner
Social Security Administration,

DEFENDANT

ORDER

On July 13, 2001, plaintiff, Susan Jenkins, appealed to this Court from the denial of her application for social security disability benefits by the Commissioner of the Social Security Administration (hereinafter "Commissioner"). (Doc. #1). On July 19, 2002, the undersigned remanded this matter for further consideration, pursuant to sentence four, 42 U.S.C. § 405(g). (Doc. #10 & 11).

Plaintiff's attorney, Shannon Muse Carroll, filed a Motion for An Award of Attorney Fees Under The Equal Access to Justice Act, (hereinafter the "EAJA"), on November 18, 2002. (Doc. #17-19). The Commissioner failed to respond to the motion for EAJA fees. On September 16, 2002, the undersigned found that plaintiff's counsel was entitled to an EAJA award in the amount of \$2,000.00, to be paid in addition to, but not out of, any past due benefits which plaintiff may be awarded in the future. (Doc. #20 & 21).

On February 22, 2006, counsel filed a motion for attorney's fees pursuant to 42 U.S.C. § 406(b). (Doc. 23). This motion was denied by the court on May 24, 2006, due to counsel's failure to file a brief in support of the motion and failure to produce evidence in the record to establish the amount of plaintiff's award for past due benefits. (Doc. 24). The court ruled as follows with regard

¹Linda S. McMahon became the Social Security Commissioner on January 20, 2007. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Linda S. McMahon has been substituted for acting Commissioner Jo Anne B. Barnhart as the defendant in this suit.

to counsel's failure to produce sufficient evidence of an award of benefits:

While Plaintiff's counsel purports to submit this information via her affidavit, such is not sufficient proof that a party prevailed or the amount of any past-due benefits. A copy of the favorable decision of the administrative law judge is an example of sufficient evidence to establish that Plaintiff received a favorable decision upon remand. Likewise, a copy of the award letter from the Social Security Administration stating the exact dollar amount of past-due benefits is an example of sufficient evidence to establish the amount of past due benefits to which Plaintiff is entitled. The award letter from social security and the favorable decision of the administrative law judge should have been attached to the motion for attorney fees as evidence of Plaintiff's receipt of a favorable decision and as evidence of the amount of any past-due benefits.

(Doc. 24).

Now before the Court is counsel's second motion for approval of attorney's fees pursuant to 42 U.S.C. § 406(b) in the amount of \$5,375.00, which represents 21.50 hours at the rate of \$250 per hour. (Doc. #26-3). We note that counsel has filed a brief in support of her motion. (Doc. 27). However, her motion and brief still lack sufficient evidence to establish the award and amount of past due benefits received by the plaintiff. Counsel has not furnished the court with a copy of the award letter from the Social Security Administration. As such, plaintiff's motion for attorney fees is denied.

ENTERED this 7th day of February 2007.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE